IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5695 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT WATER SUPPLY & SEWERAGE BOARD

Versus

RAMJIBHAI LAXAMANBHAI SOLANKI

Appearance: MR KH BAXI for Petitioner No. 1-2
MR JANAKRAY K RAVAL for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 24/06/2002

ORAL JUDGEMENT

Rule. Mr.J.K. Raval appears on caveat and waives service of rule on behalf of the respondent. With the consent of the parties, the matter is taken up for final hearing today.

The petitioner-Board has challenged the Award passed by the Presiding Judge, Labour Court, Kalol, dated 24.10.2001 in Reference (LCK) No.460 of 1993. By the impugned Award, the Labour Court has passed an order of reinstatement in favour of the respondent-workman on his original post with 50% back wages. It is argued by Mr.Baxi, on behalf of the Board, that the Tribunal has committed an error of law in passing the said Award, as,

in his submission, the concerned workman was taken on duty as a daily wager and, therefore, he has no substantive right to the post in question.

I have gone through the Award of the Labour Court and I have also considered the arguments of Mr.Baxi, for the petitioner, and Mr.Raval for the respondent.

The Tribunal has observed in the Award that in spite of the fact that ample opportunity was given to the present petitioner to lead evidence, no evidence was led before the Labour Court. The Tribunal has found that the concerned workman was appointed as a Chowkidar from 15.8.1986, but on the ground of alleged misconduct, his services were terminated. The Labour Court has found that the case put forward by the Management to the effect that the concerned workman voluntarily stopped attending duty is not acceptable. On appreciation of evidence, the Tribunal came to the conclusion that the action of the Management in terminating the services of the present respondent is arbitrary and contrary to the provisions of law. The Tribunal has given very cogent reasons in paragraphs 5 and 6 of the Award in passing the aforesaid Award. In view of the aforesaid facts and circumstances of the case, I do not find any substance in the argument of Mr.Baxi to the effect that the order of the Labour Court in reinstating the said workman is not correct. It is not in dispute that the concerned workman was serving on a daily rated basis and, in the facts and circumstances of the case, in my view, the order of reinstatement is rightly passed and the same is not required to be interfered with. Mr.Raval, learned Advocate for the respondent, has also fairly conceded that the respondent has no objection if the order of back wages awarded by the Labour Court is set aside. In view of the aforesaid circumstance, the order of the Labour Court is required to be modified to the aforesaid extent. The order of reinstatement as well as continuity of service is maintained. The respondent be reinstated as per the order of the Labour Court. However, so far as the order regarding payment of back wages is concerned, the same is quashed and set aside. It seems that without following proper procedure and even without holding appropriate enquiry, the services of the concerned workman were terminated. However, it will be open for the petitioner-Board, if the Board so desires, to hold departmental enquiry. However, this Court has not expressed any opinion whether such enquiry would be maintainable in view of the long delay.

The petition is accordingly partly allowed. Rule

is partly made absolute to the aforesaid extent with no order as to costs.

(P.B. Majmudar, J.)

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(apj)